

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH 'SMC' ALLAHABAD**

[THROUGH VIRTUAL COURT]

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER

**ITA Nos.48 to 55/ALLD/2019
Assessment Years: 2005-06 to 2011-12**

M/s Meja Filling Station, Lakhimpur, Meja Road, Allahabad	v.	DCIT, Central Circle, Allahabad
TAN/PAN:AAHFM 2296H		
(Appellant)		(Respondent)

Appellant by:	Shri S.K. Jaiswal, CA
Respondent by:	Shri Shantanu Dhamija, CIT (DR)
Date of hearing:	17.02.2021
Date of pronouncement:	22.02.2021

ORDER

These eight appeals by the assessee are directed against eight separate orders of Id. CIT(A)-III, Lucknow all dated 21.01.2019 arising from assessment orders passed u/s. 153C and 153B(1)(b) r.w.s. 143(3) for AYs. 2005-06 to 2011-12. There are two appeals for the Assessment year 2008-09 due to the reason that a new partnership deed was executed in the said year and therefore, the Assessing Officer framed two assessment orders one for the period w.e.f. 01.04.2007 to 06.12.2007 and second from 07.12.2007 to 31.03.2008.

2. The assessee has raised two set of common grounds as the grounds for the AY 2005-06 to part period of 2008-09 in the ITA No. 48 to 51 are identical and based on identical facts and the second set of common grounds relates to ITA No. 52 to

55/Alld/2019. The grounds raised for the AY 2005-06 and 2009-10 are reproduced below:

AY 2005-06

- “1. BECAUSE the assessment proceeding initiated under section 153C without recording of any valid satisfaction note in the case of person who is subjected to search under section 132, is vitiated and liable to be annulled.
2. BECAUSE no incriminating material was found that could form the basis for initiation of reassessment proceeding under section 153C of the Income Tax Act, 1961.
3. BECAUSE the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in holding that addition of 5,52,345/- made substantively in the hand of Shri Ajay Kumar & Vijay Kumar and protectively in the hands of appellant is to be examined on merit and sustaining addition of Rs. 2,76,171/- substantively in the hands of appellant and deleting the substantive addition made in the hand of Ajay Kumar and Vijay Kumar who was carrying the business of pump.
4. BECAUSE up to 07.08.2007 the business of the retail out let was carried out by Ajay Kumar and Vijay Kumar in terms of agreement made by the licensee of the pump, Shri Suresh Kumar and Gulab Chand who have been allotted the retail out let in Schedule Cast quota of the Indian Oil Corporation Ltd.
5. BECAUSE the appellant firm came into existence only on 1st December 2007 in terms of Deed of Partnership executed on 01.12.2007, therefore assessment made in the hands of appellant is liable to be deleted.
6. BECAUSE in any case estimate of net profit rate @ 1% of gross sales is very much excessive.
7. BECAUSE the appellant denies for liability of interest levies under section 234A and 234B of the Income Tax Act, 1961.
8. BECAUSE the order appealed against is contrary to the facts, law and principle of natural justice.”

AY 2009-10

- “1. *BECAUSE the assessment proceeding initiated under section 153C without recording of any valid satisfaction note in the case of person who is subjected to search under section 132, is vitiated and liable to be annulled.*
2. *BECAUSE the appellant has fully and truly disclosed all the material facts in the return filed originally under section 139 and no incriminating material was found that could form the basis for initiation of reassessment proceeding under section 153C of the Income Tax Act, 1961.*
3. *BECAUSE the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in invoking the provision section 145(3) and sustaining addition of Rs. 2,15,705/- by applying the net profit rate of 1% on disclosed sales.*
4. *BECAUSE the appellant is maintaining regular books of account and trading results declared is fully verifiable from the books of account and supporting bills and vouchers maintained in normal course of business.*
5. *BECAUSE in any case the learned Commissioner of Income Tax (Appeals) has erred in law in not allowing deduction of interest on capital and remuneration to the working partners as admissible under section 40(b) of the Income Tax Act, 1961.*
6. *BECAUSE the appellant denies for liability of interest levies under section 234A and of the Income Tax Act, 1961.*
7. *BECAUSE the order appealed against is contrary to the facts, law and principle of natural justice.”*

3. First the appeal for the AY 2005-06 to part period of 2008-09 are taken up for adjudication.

4. The brief facts leading to the controversy are that assessee firm was allotted retail outlet dealership for sale of petrol and high speed diesel commonly known as Petrol Pump) by Indian Oil Corporation Ltd. (IOCL) vide LOI dated 07.01.1994. There were two partners namely Shri Gulab Chand son of Shri Babu Lal and Shri Suresh Kumar Rakesh son of Sri Shyam Lal at the time of LOI and commencement of business of the

assessee firm. Thereafter these two partners decided to handover the operation of the pump to Shri Ajay Kumar and Vijay Kumar vide general power of attorney dated 08.01.1999 and they have started the operation/business activities of the petrol pump from 15.10.1999. The original partners Shri Gulab Chand and Shri Suresh Kumar Rakesh also authorized to Shri Ajay Kumar and Vijay Kumar to operate bank accounts of the firm for smooth conducting of the business. They continue to do the business activities on behalf of the original allottees up to 07.12.2007 when the control and administration of the business was again taken back by the original allottees from Shri Vijay Kumar and Ajay Kumar. Thereafter there was a search and seizure action carried out u/s. 132 of the Act on 03.02.2011 at the residential and business premises belonging to Vaishwya Group of cases. During the search and seizure action certain papers and documents belonging to the assessee M/s Meja Filing Station were found and seized from hotel Ajay International, Allahabad. Pursuant to the search and seizure action, notice u/s. 153C of the Act was issued by the DCIT, Central Circle to the assessee for the AYs 2005-06 to 2011-12. The Assessing Officer has framed the assessment u/s. 153C r.w.s. 153A and 143(3) for AYs 2005-06 to 2010-11 as well as u/s. 153B(1)(b) for the assessment year 2011-12. The Assessing Officer while completing the assessment has rejected the books of account of the assessee and estimated the income by applying 2% N.P. The Assessing Officer made substantive assessment for the AY 2005-06 to part period of 2008-09 (up to 6.12.2007) in the hands of Vijay Kumar and Ajay Kumar and protective assessment in the hand of assessee firm. For the period 07.12.2007 to 31.03.2008 and the remaining AYs i.e., 2009-10 to 2011-12 the Assessing Officer made substantive assessment in the hands of the assessee firm. Though the income was estimated by applying 2% of NP.

5. The Id. CIT(A) has held that in view of its finding in the case of Ajay Kumar and Vijay Kumar the income has to be assessed on substantive basis in the hands of the assessee and accordingly the protective assessment was converted to the substantive

assessment. However, the ld. CIT(A) has restricted the addition by applying NP @ 1%. Aggrieved by the orders of the authorities below the assessee has filed these appeals. The Department has accepted the order of the ld. CIT(A) and has not challenged the same though the appeals are also falling in the category of monetary limit below the prescribed tax effect as per the CBDT circular.

6. Ground No.1-6 regarding validity of proceeding u/s. 153C of the Act. The ld. AR of the assessee has submitted that the Assessing Officer has invoked the provisions of Section 153C but he has made only protective assessment for the AYs 2005-06 to 2008-09 (part period) and therefore the action of the Assessing Officer is not sustainable in law to tax in the hands of the assessee based on the material found and seized during the search and seizure action. He has relied upon the decision of the Hon'ble Bombay High Court in the case of DHFL Venture Capital Fund vs. Income Tax Officer and Ors. [2013] 358 ITR 471 (Bom), and submitted that the provisions of Section 147/148 as well as u/s. 153C cannot be invoked for protective assessment. He has further contended that the assessee firm was constituted on 07.12.2007 and prior to that the income cannot be assessed in the hands of the assessee firm he has referred to the partnership deed dated 07.12.2007 as well as the PAN allotted to assessee on 01.12.2007 and submitted that prior to 07.12.2007 assessee firm was not in existence and hence assessments framed by the Assessing Officer in the name of the assessee are void ab initio. The ld. AR has submitted that the mandatory condition for invoking the provisions of Section 153C has not been satisfied in the case in hand and therefore the entire proceedings are illegal and without jurisdiction. He has also relied upon the decision of the Hon'ble Supreme Court in the case of Manish Maheswarivs. JCIT 289 ITR 341 as well as decision of Hon'ble Rajasthan High Court in the case of CIT vs. Smt. Saraswati Devi, 2012 ITR 445 and contended that the Hon'ble High Court has held that the protective assessment is practically no assessment in the eyes of law. Even otherwise the filing station was run by Shri Ajay Kumar and Vijay Kumar as per the

attorney dated 11.01.1999 in the manner they deemed proper with their resources. The entire affairs of the filing station including administration and financial affair were controlled and managed by Shri Ajay Kumar and Vijay Kumar. Therefore, no income can be assessed in the hand of the assessee till the assessee took over the control of filing station on 07.12.2007. Thus, the ld. AR has submitted that the assessment framed by the Assessing Officer are not valid and liable to be quashed.

7. On the other hand, ld. DR has submitted that LOI was issued by IOC in favour of two partners Shri Gulab Chand and Suresh Kumar Rakesh and therefore, since beginning there was a partnership firm comprising of two partners Shri Gulab Chand and Suresh Kumar Rakesh. He has further contended that the assessee never filed return of income up to the AY 2008-09 and only after taking PAN number the assessee firm has filed the return of income for the part period of AY 2008-09 and subsequent assessment years. Thus, the seized material revealing the business income of the assessee firm is a tangible incriminating material to show undisclosed income in the hands of the assessee firm which is to be assessed for all these years. He has further contended that the assessee even did not produce any books of account for these assessment years and therefore, the Assessing Officer has rightly estimated the income by applying N.P. rate which was restricted by the ld. CIT(A) to 1%. Thus, the income estimated by applying N.P. at 1% is very reasonable and proper. The ld. D.R. has contended that it is a clear case of non disclosure of the income as the assessee firm as it has not filed any return of income or paid the due taxes right from the beginning till the AY 2008-09 when the assessee obtained the PAN number. He has relied upon the orders of the authorities below.

8. I have considered the rival submissions as well as relevant material placed on record. The assessee has challenged the validity of assessment framed by the Assessing Officer u/s. 153C primarily on two grounds viz (i) that the Assessing Officer has made

a protective assessment therefore, at the time of initiation of proceeding u/s. 153C Assessing Officer was not sure whether there is any undisclosed income revealed by the seized material in the hand of the assessee and (ii) assessment framed by the Assessing Officer on non existence person prior to 7.12.2007. It is pertinent to note that the assessee firm was very much in existence right from the beginning as it is evident from the LOI dated 07.01.1994, the power of attorney given by two partners namely Gulab Chand and Suresh Kumar Rakesh in favour of the Ajay Kumar and Vijay Kumar and also deed of mandate for operating the bank account by Shri Ajay Kumar and Vijay Kumar. The authorization for operating the bank account is signed by the partners of partnership firm namely Meja Filing Station as it is clear from the copy of the letter of mandate executed by the assessee firm through its partners on 02.11.1999. Thus, M/s. Meja Filing Station was a partnership firm as on the date when the letter of mandate was signed and executed by the assessee firm through partners Shri Gulab Chand and Suresh Kumar Rakesh in favour of Shri Ajay Kumar and Vijay Kumar. These documents have been reproduced by the Assessing Officer and are undisputed documents obtained from the Bank of Baroda, Meja Road, Allahabad. Therefore, the execution of partnership deed on 07.12.2007 is nothing but reconstitution of the partnership firm, which was already in existence having the same partners. Thus, there was no change either in the constitution or the partners of the partnership firm and therefore, the new partnership deed executed on 07.12.2007 would not have any effect on the existence of the assessee partnership firm at least from the year 1999 when the assessee has authorized Shri Ajay Kumar and Vijay Kumar as well as execution the letter of mandate to operate the bank account. These undisputed documentary evidences establish the fact of existence of the partnership firm M/s Meja Filing Station right from the beginning. Therefore, this contention of the Id. AR that assessee firm was not inexistence is contrary to the documentary evidence. Even non obtaining the PAN

number by the assessee firm prior to 01.12.2007 would also not alter the status of the existence of the partnership firm.

9. As far as the satisfaction of the Assessing Officer for initiating the proceedings u/s. 153C is concerned, the assessee has not disputed the material found and seized during the course of search and seizure proceedings and belonging to Meja Filing Station. The details of documents seized from Hotel Ajay International Allahabad has been recorded by the Assessing Officer in Para 2.5 reads as under:

BA-1(Hotel) Ajay International	LP-4	HAI	Ledger of Meja Filling Station in the books of Hotel Ajiy International for 01.04.2007 to 12.102007. Several cash transactions exceedings Rs.2000/- are made in the name of Suresh Chandta and other family members
BA-1	LP-4	HAI	Photo copy of ledger of Meja Filling Station in the books of Hotel Ajay International for 01.042007 to 12.10.2007. Several cash transactions exceeding Rs.2000/- are made In the name of Suresh Candra and other family members
BA-1	LP-4	HAI	Photocopy of ledger of Meja Filling Station in the books of Hotel Ajay International for 01.04.2007 to 12.10.2007. Several cash transactions exceedings Rs, 2000/- are made in the name of Suresh Chandra and other family members

BA-1	LP-4	HAI	Photo copy of ledger of Meja Filling Station in the books of Hotel Ajay International for 01.04.2007 to 12.10.2007. Several cash transactions exceedings Rs.2000/- are made in the name of Suresh Chandra and other family members
BA-1	LP-33	HAI	Payment vouchers of Hotel Ajay International in respect of rent of Meja Filling Station @Rs.15,000/- p.m.
BA-1	LP-33	HAI	Payment vouchers of Hotel Ajay International In respect ot rent of Meja Filling Station @Rs.15,000/- p.m.
S-1 (Office of Arhatia Nagar& Co.)	LP-6	Ramji Vaish	Annexure Part-A, M/s Meja Filling Station, A.Y.2005-06
RA-1 {Reside nee at 86, New Bairhana)	LP-7	Ramji Vaish	Order of Commissioner, Allahabad ;n the case of Meja Filling Station Vs D.M., Ald
RA-1	LP-8	Ramji Vaish	In the books of Meja Filing Station. Ledger A/c of Kapoor Chand& Sons

10. Therefore, the above documents found and seized during the search and seizure action belongs to Meja Filing Station including ledger accounts of assessee in the books of Hotel Ajay International as well as certain vouchers in the name of Shri Ajay Kumar and Vijay Kumar, who were running the filing station as per the authorization at the relevant point of time. The documents found and seized pertains to the Financial Year 2007 and there is no ambiguity in the details as found recorded in the seized material

that the assessee was doing the business of running filing station being retail dealership of sale of petrol and high speed diesel. Since there was no return of income filed by the assessee up to the AY 2008-09 till 07.12.2007 therefore, the seized material constitute incriminating material disclosing undisclosed income of the assessee. The seized material leads to the satisfaction that it has a bearing on the determining of the total income of the assessee at least for the assessment years for which the assessee did not file any return of income. Accordingly, I do not find any substance or merit in this contention of the assessee and Grounds No. 1 to 5 of the assessee's appeal are dismissed.

11. Ground No.6 is regarding estimation of income by applying NP @ 1% of gross sales being excessive.

12. I have heard the ld. AR as well as ld. DR and considered the relevant material on record. Except the contention of excessiveness, the ld. AR of the assessee has not brought any material to show that the actual income of the assessee for these years is very less than 1%. Since the assessee has not produced any books of account as well as other supporting documents therefore, the N.P. applied by the ld. CIT(A) at 1% is very reasonable and proper and does not required any interference. Accordingly, appeals of the assessee i.e. ITA Nos. 48 to 51/Alld/2019 are dismissed.

13. As regards the Appeal No. 52 to 55/Alld/2019 are concerned, it is noted that the Assessing Officer has framed the assessment on substantive basis by applying N.P. at 2% which was restricted by the ld. CIT(A) to 1%. The Assessing Officer rejected the books of account of the assessee due to non production of the relevant details and even the books of account, therefore, to the extent of rejecting the books of account the Assessing Officer was justified however it is pertinent to note that for the AY 2008-09 (from 07.12.2007 to 31.03.2008) to AY 2010-11 the assessee firm filed return of income u/s. 139(1) of the Act disclosing the income from the business of retails outlet of selling

petrol and high speed diesel and therefore, the material found and seized during the search and seizure action pertaining to the F.Y. 2007 shall have no bearing on determination of the total income of the assessee when the assessee has already declared the income from such business. The Assessing Officer has passed an identical order by applying the N.P. @ 2% after rejecting the books of account but the seized material which was found during search and seizure action reveals that the assessee is engaged in the business and once the assessee has already declared the income from said business in the return of income filed u/s.139(1) then the said seized material which reveals the details of the transaction of the FY 2007 up to 07.12.2007 would not be considered as incriminating material to have any effect on determination of the total income of the assessee for these years. Therefore, the addition made by the Assessing Officer in the proceeding u/s. 153C for the Assessment year 2008-09 from 07.12.2007 to 31.03.2008 to AY 2010-11 are not based on any material revealing undisclosed income. Accordingly, the additions made by the Assessing Officer for these years is liable to be **deleted**.

14. As far as the AY 2011-12 since this is the year of search and the assessee was yet to file the return of income at the time of search and seizure action therefore, the assessment was completed u/s. 153B(1)(b) of the Act. Hence, this is a regular assessment though the assessment was framed after the search and seizure action.

15. I have heard the ld. AR as well as ld. D.R. and carefully perused the relevant material on record. Alleged seized material has no relevance to the assessment for the year under consideration but once the books of account of the assessee are rejected for want of supporting vouchers and details then the income of the assessee is required to be estimated. In view of the finding on estimation of the income for the AYs 2005-06 to 2007-08 I do not find any error or illegality in the impugned order of the ld. CIT(A) in estimating the income of the assessee by applying N.P. at 1% which is a reasonable

and justified. So far as the objection of the assessee regarding the limitation in framing the assessment, since the provisions of Section 153B(1)(b) are applicable for this assessment year which extent the period of limitation therefore I do not find any substance in this objection of the assessee. The assessee has also raised the ground regarding disallowance of deduction of interest of capital, remuneration to the working partners in Ground No.6 which reads as under:

“6. BECAUSE in any case estimate of net profit rate @ 1% of gross sales is very much excessive.”

16. On going through the impugned order of the authorities below it is noted that income of the assessee was estimated by applying the N.P. on total sales therefore, the question of allowing the further deduction does not arise. Even assessee has not raised such a ground before the Id. CIT(A). Accordingly, this ground of the assessee is also dismissed.

17. In the result, Appeal i.e. ITA Nos. 52 to 54/Alld/2019 are allowed others appeals i.e. ITA Nos. 48 to 51 and 55/Alld/2019 are dismissed.

(Order pronounced in the open Court on 22 /02/2021)

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

Dated: /02/2021

Aks/-

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT(A) -
4. CIT
5. DR -